IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Government Appeal No. 108 of 2007

State of Uttarakhand. ……..Appellant.

Versus

Sameem Kuraishi
and others. ....…. Respondents.

Present:
Mr. Sachin Panwar, Brief Holder for the State of Uttarakhand / appellant.
Mr. B.S. Bisht, Amicus Curiae for the respondents.

Hon'ble Alok Singh, J

1. Present appeal is directed against judgment and order dated 16.01.2007 passed by Additional Sessions Judge, Haridwar in Sessions Trial No. 498 of 1999 whereby respondents were acquitted of the charge levelled against them under Section 147, 307/149, 364/149 IPC.

2. Brief facts of the present case *inter alia* are that PW 1 Yogendra Kumar lodged an FIR on 02.06.1998 to the effect that on 02.06.1998, PW1 Yogendra Kumar and about 60-65 person went to Shakumbari Temple in a Bus bearing registration no. UP 12 B 9605 in order to attend Bhandara. At about 10.00 p.m. when they reached near Kassawan Culvert, then a tempo hit the bus, the moment driver of the bus objected the tempo driver Shamim Kuraishi, he came along with respondents and 250-300 persons; they with the intention to kill attacked the passengers of the bus with lathi, baton and iron rod; they took Sheelu forcefully; earrings and golden chain of Shramistha were looted; wrist watch of Sri Krishan Sharma was also looted by them; on raising alarm, police reached the spot; they arrested Mohd. Gaffar, Galib, Gulfam and Ezaaz Ahmad from the spot. FIR was lodged; matter

was investigated and a charge sheet was filed under Section 147, 148, 307, 364 IPC.

3. After committal of the case to the court of Sessions, Additional Sessions Judge, Haridwar framed charges under Section 147, 307/149, 364/149 IPC against the respondents to which they pleaded not guilty and claimed to be tried.

4. Learned trial court having heard the learned counsel for the parties and going through the material available on record, was pleased to acquit the accused / respondents of the charges levelled against them.

5. Heard Mr. Sachin Panwar, Brief Holder for the State of Uttarakhand / appellant and Mr. B.S. Bisht, Amicus Curiae for the respondents and perused the record.

6. Mr. Sachin Panwar, learned Brief Holder for the State of Uttarakhand submits that learned trial court failed to consider the fact that there was a mob of 250 – 300 persons, therefore, it was not possible for the witness to remember the faces of accused persons.

7. In the FIR, the complainant PW 1 Yogendra Kumar named in the accused respondents with the names of their father, however, in the examination in chief he stated that he did not know the names of accused and their father's name; he came to know their names while they were doing maarpeet while addressing each other with their names; he himself stated that he had not written the father's name of accused persons; in the identification parade, he failed to recognize any of the accused persons. PW2 Rakesh Kumar also failed to recognize any of accused persons. PW3 Krishan Sharma in the examination in chief stated that he did not know the names of accused persons and

their father's name but as to how Inspector had mentioned the name of accused and their father under Section 161 CrPC is not known to him. PW 4 Sheelu, who was abducted by the accused persons named the driver of the tempo as Azad whereas he was Shamim Kuraishi. He also failed to recognize the accused persons in court. Similarly PW5 Veeresh also stated that he did not know the names of the accused and their father's name but in the statement recorded under Section 161 names of accused persons and their father's name were mentioned. PW 7 Ved Prakash was declared hostile.

8. Had the accused snatched the earrings and golden chain of Shretha, she would have received injuries but she did not receive any injury. Motive of abduction of Sheelu was not known. Police had not shown any person fled from the spot. It has come on record that accused respondents were arrested from the spot but no lathi, baton or iron rod were recovered from the accused persons. Police had not filed any charge-sheet against respondents for loot of ornaments and wrist watch.

9. All the above facts do not inspire confidence in the prosecution story, therefore, prosecution failed to prove its case beyond reasonable doubt. I am conscious about the fact that in an appeal or revision against the judgment of acquittal, appellate or revisional court should not lightly interfere with the reasoning and findings recorded by the trial court, even if two views are possible. The Superior Court may interfere with the judgment of acquittal, only when the Superior Court comes to a definite conclusion that judgment of acquittal is shocking in the facts and circumstances of the case, or the Superior Court finds that trial court fails to appreciate the evidence in right perspective or if judgment impugned is found to be totally perverse or if the

Superior Court comes to a conclusion that trial court denied fair opportunity to adduce evidence on the ground uncalled for.

10. In view of the above discussion, I do not find any illegality or perversity in the impugned judgment. Accordingly, government appeal fails and is hereby dismissed without costs.

11. Registry is directed to supply a copy of this judgment to the court below for information along with lower court record.

(Alok Singh, J.)
01.05.2019

SKS